

SECOND REGULAR SESSION

SENATE BILL NO. 1138

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR McKENNA.

Read 1st time February 14, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4802S.021

AN ACT

To amend chapter 292, RSMo, by adding thereto one new section relating to occupational safety and health administration training requirements for certain employees, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 292, RSMo, is amended by adding thereto one new section, to be known as section 292.675, to read as follows:

292.675. 1. As used in this section, the following terms shall mean:

(1) "Construction", construction, reconstruction, improvement, enlargement, alteration, demolition, painting and decorating, or major repair;

(2) "Department", the department of labor and industrial relations;

(3) "Person", any natural person, joint venture, partnership, corporation, or other business or legal entity;

(4) "Public body", the state of Missouri or any officer, official, authority, board or commission of the state, or other political subdivision thereof, or any institution supported in whole or in part by public funds;

(5) "Public works", all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. "Public works" includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by said utility.

21 2. Any person signing a contract to work on the construction of
22 public works for any public body shall provide a ten-hour Occupational
23 Safety and Health Administration (OSHA) construction safety program
24 for their on-site employees which includes a course in construction
25 safety and health approved by the United States Occupational Safety
26 and Health Administration. All employees are required to complete the
27 program prior to beginning work on such construction project.

28 3. Any employee found on a worksite subject to this section
29 without documentation of the successful completion of the course
30 required under subsection 2 of this section shall be subject to
31 immediate removal.

32 4. The public body shall specify in the resolution or ordinance
33 and in the call for bids for the contract, the requirements of this
34 section. The contractor to whom the contract is awarded and any
35 subcontractor under such contractor shall require all on-site employees
36 to complete the ten-hour OSHA training program. The public body
37 awarding the contract shall include this requirement in the
38 contract. The contractor shall forfeit as a penalty to the public body on
39 whose behalf the contract is made or awarded, two thousand five
40 hundred dollars plus one hundred dollars for each employee employed
41 by the contractor or subcontractor, for each calendar day, or portion
42 thereof, such employee is employed without the required ten-hour
43 OSHA training. The public body awarding the contract shall include
44 notice of these penalties in the contract. The public body awarding the
45 contract shall withhold and retain therefrom, all sums and amounts due
46 and owing as a result of any violation of this section when making
47 payments to the contractor under the contract. The contractor may
48 withhold from any subcontractor, sufficient sums to cover any penalties
49 the public body has withheld from the contractor resulting from the
50 subcontractor's failure to comply with the terms of this section. If
51 payment has been made to the subcontractor without withholding, the
52 contractor may recover the amount of the penalty resulting from the
53 fault of the subcontractor in an action maintained in the circuit court
54 in the county in which the public works project is located from the
55 subcontractor.

56 5. In determining whether a violation of this section has
57 occurred, and whether the penalty under subsection 4 of this section

58 shall be imposed, the department shall investigate any claim of
59 violation. Upon completing such investigation, the department shall
60 notify the public body and any party found to be in violation of this
61 section of its findings and whether a penalty shall be
62 assessed. Determinations under this section may be appealed in the
63 circuit court in the county in which the public works project is located.

64 6. If the contractor or subcontractor fails to pay the penalty
65 within forty-five days following notification by the department, the
66 department shall pursue an enforcement action to enforce the monetary
67 penalty provisions of subsection 4 of this section against the contractor
68 or subcontractor found to be in violation of this section. If the court
69 orders payment of the penalties as prescribed under subsection 4 of
70 this section, the department shall be entitled to recover its actual cost
71 of enforcement in addition to such penalty amount.

72 7. The department may establish rules and regulations for the
73 purpose of implementing the provisions of this section. Any rule or
74 portion of a rule, as that term is defined in section 536.010, RSMo, that
75 is created under the authority delegated in this section shall become
76 effective only if it complies with and is subject to all of the provisions
77 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
78 section and chapter 536, RSMo, are nonseverable and if any of the
79 powers vested with the general assembly pursuant to chapter 536,
80 RSMo, to review, to delay the effective date, or to disapprove and annul
81 a rule are subsequently held unconstitutional, then the grant of
82 rulemaking authority and any rule proposed or adopted after August
83 28, 2008, shall be invalid and void.

Section B. Section A of this act shall become effective on August 28, 2009.

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